Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	**)**	
	)	
Rules and Regulations Implementing the	**)**	**CG Docket No. 02-278**
Telephone Consumer Protection Act of 1991	**)**	**FCC Number 10-18**
	)	

COMMENTS OF THE STUDENT LOAN SERVICING ALLIANCE (SLSA) AND THE SLSA PRIVATE LOAN COMMITTEE

5/21/2010

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EXECUTIVE SUMMARY

The stated purpose of the Federal Communication Commission's (FCC) proposed changes to its regulations implementing the Telephone Consumer Protection Act (TCPA)[1] is to "harmonize those rules with the Federal Trade Commission's (FTC's) recently amended Telemarketing Sales Rule,"[2] because the Commission's rules cover some telemarketers that are not covered under the FTC's rules. Nothing in the NPRM discussion indicates that the FCC intended to rewrite the rules for non-telemarketing calls to wireless devices or to overrule its 2008 declaratory ruling.[3] However, the proposed rules impose onerous new requirements to obtain express prior written consent in order to make *any* call (other than an emergency call) to a wireless device using a prerecorded voice or automatic telephone dialing system.

Increasingly, consumers are moving to wireless-only telephone service. This is especially true of student loan borrowers, many of whom are 18-23 at the time they take out a student loan. Regulations under the Higher Education Act[4] require that student loan lenders and servicers contact their borrower-customers regularly in order to provide information to them, as well as to undertake collection activities on delinquent loans. The use of autodialers and prerecorded calls is common in the industry, and the efficiencies that they provide help to lower loan costs to consumers. All of the calls that we make to

[1] Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991) (codified at 47 U.S.C. § 227).
[2] Telephone Consumer Protection, 75 Fed. Reg. 13471 (proposed Mar. 22, 2010) (to be codified at 47 C.F.R. pts. 64 & 68) [hereinafter NPRM or *proposed rule*].
[3] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling*, 23 F.C.C. Rcd. 559 (Jan. 4, 2008) [hereinafter *FCC 07-232*].
[4] 34 C.F.R. § 682.411.

our borrowers are non-telemarketing calls made in compliance with longstanding FCC guidance, including FCC 07-232.

The Commission should limit the applicability of any changes in the TCPA regulations to telemarketing calls. Further the Commission should clarify that for non-telemarketing calls, prior express consent means simply that consent must be obtained prior to calling a consumer's wireless number.

DISCUSSION

I. THE COMMISSION SHOULD NOT ADOPT INCREASED RESTRICTIONS ON AUTODIALED AND PRE-RECORDED NON-MARKETING CALLS TO WIRELESS NUMBERS

A. Who We Are and Why We Care

The following are comments from the Student Loan Servicing Alliance (SLSA) and the SLSA Private Loan Committee (SLSA PLC) in response to the Notice of Proposed Rulemaking for 47 CFR Parts 64 and 68, CG Docket No. 02-278; FCC 10-18, published in the March 22, 2010 *Federal Register* (referred to variously hereafter as the "NPRM" and the "proposed rules"). SLSA is a non-profit trade association made up of over 30 major student loan servicers whose members service more than $427 billion in federally guaranteed student loans for approximately 25 million borrowers. In addition SLSA members service almost $85 billion in private education loans for approximately 5 million borrowers. The SLSA PLC is a committee made up of over 55 organizations (many of whom are not SLSA members) involved in financing, lending, servicing, and collecting private education loans. As discussed more fully below, SLSA and SLSA PLC

members make calls to our customers in connection with the servicing of loans; these calls may be informational in nature or collection-related. Our concerns with the NPRM arise from its application to non-telemarketing calls, and our comments will address only the use of an ATDS or an artificial or prerecorded voice to make non-telemarketing calls to wireless devices.[5]

The stated purpose of the proposed revisions to the FCC's regulations implementing the TCPA is to "harmonize those rules with the Federal Trade Commission's (FTC's) recently amended Telemarketing Sales Rule,"[6] because the Commission's rule covers some telemarketers that are not covered under the FTC's rule. Both the "Notice of Proposed Rulemaking" adopted by the Commission on January 20, 2010 (FCC 10-18)[7] and the NPRM focus on telemarketing calls. There is no mention in either document of any impact the changes would have on non-telemarketing calls. Unlike the FTC's rule, however, the Commission's rule applies both to telemarketing and non-telemarketing calls to wireless devices, and the proposed changes have the effect of supplanting long-standing FCC guidance, including the FCC's Declaratory Ruling of December 28, 2007 (FCC 07-232), upon which many lenders have been relying to make autodialed and/or prerecorded message calls to wireless numbers.

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[5] 47 C.F.R. § 64.1200(a)(1)(iii) provides a list of wireless communication devices covered by the regulations: "any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call." In these comments we will refer to this list collectively as "wireless devices" and "wireless numbers."

[6] NPRM, *supra* note 2, at 13471.

[7] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 25 F.C.C. Rcd. 1501 (Jan. 20, 2010) [hereinafter FCC 10-18].

Under the existing regulations, all non-telemarketing calls to a wireless device using an ATDS and/or a prerecorded message are permissible with the prior express consent of the consumer. Further, under FCC 07-232, a lender (or its agent) is deemed to have prior express consent to call a wireless number if the person called provided the number in connection with an existing debt. Such consent need not be in writing. Under the proposed rule, however, the requirement that prior express consent be in writing would apply to both telemarketing and non-telemarketing calls (other than "emergency calls"), and the consent could not be obtained as a condition of the credit transaction. We believe this result is not intended and that the Commission's rule can be aligned with the FTC's rule without disturbing FCC 07-232 and without affecting non-telemarketing calls.

B. The NPRM Can Be Aligned With the FTC's Telemarketing Sales Rule Without Impacting Non-Telemarketing Calls

It is important to note the FTC's rule specifically exempts from the TSR calls initiated to recover debts. According to the FTC, "debt collection and market research activities are not covered by the Rule because they are not 'telemarketing'—i.e., they are not calls made 'to induce the purchase of goods or services.'"[8] If the FCC's intent is truly to harmonize the TCPA with the TSR, it can do so without affecting non-telemarketing calls.

According to the Congressional Findings, Congress enacted the TCPA in response the intrusiveness and proliferation of telemarketing calls. Congress found that individuals perceived autodialed and prerecorded messages to be a nuisance and an

[8] Telemarketing Sales Rule, 68 Fed. Reg. 4580, 4664 n.1020 (Jan. 29, 2003) (codified at 16 C.F.R. pt. 310) [hereinafter *TSR*].

invasion of privacy, but allowed the FCC flexibility to design different rules for automated or prerecorded calls it deemed were not a nuisance or an invasion of privacy. The Commission took this charge seriously and explained that the TCPA was not meant to interfere with non-telemarketing calls from a business to its customers:

> Additionally, the legislative history indicates that the TCPA does not intend to unduly interfere with ongoing business relationships; barring autodialer solicitations or requiring actual consent to prerecorded message calls where such relationships exist could significantly impede communications between business and their customers.[9]

In 1995 the FCC again specifically exempted from the rules regarding prerecorded messages those calls a business makes to its existing customers and calls that are non-telemarketing.[10]

In FCC 07-232 the Commission noted that "the provision of a cell phone number to a creditor, *e.g.*, as part of a credit application, reasonably evidences prior express consent by the cell phone subscriber to be contacted at that number regarding the debt"[11] and further noted that the legislative history in the TCPA supports such an interpretation. The House report on what ultimately became the TCPA states:

> The restriction on calls to emergency lines, pagers, and the like does not apply when the called party has provided the telephone number of such a line to the caller for use in normal business communications.[12]

The Commission recognized in FCC 07-232 that "calls solely for the purpose of debt collection are not telephone solicitations and do not constitute telemarketing." Yet the

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[9] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Declaratory Ruling*, 7 F.C.C. Rcd. 8752, 8770, ¶ 34 (Oct. 16, 1992) [hereinafter *FCC 92-443*].
[10] *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 F.C.C. Rcd. 12391, 12400, ¶ 17 (Aug. 7, 1995) [hereinafter *FCC 95-310*].
[11] FCC 07-232, *supra* note 3, at 564, ¶ 9.
[12] *Id.* (citing H.R. Rep. No. 102-317, at 17 (1991)).

NPRM treats such calls as telemarketing calls even though the Commission recognizes they are not.

SLSA and SLSA PLC members have been operating under the requirements of the regulations and the FCC's rulings and orders for almost 20 years. We have taken steps to make sure that our customers understand that they are providing a telephone number—whether it is a landline or a wireless number—so that we may call them at that number and they are giving permission for us to call them regarding their debt using autodialers and/or leaving prerecorded messages.

Recognizing the importance of being able to communicate with borrowers and acknowledging the fact that the demographic of student loan borrowers is such that many have only wireless devices, the United States Department of Education (ED) has taken steps to obtain prior express consent for federal loans. Language in multiple OMB-approved Federal student loan forms[13] notifies borrowers that if they provide a wireless number, they will be called on that number regarding their loan(s). For example:

> I authorize the school, the lender, the guarantor, the Department, and their respective agents and contractors to contact me regarding my loan(s), including repayment of my loan(s), at the current or any future number

[13] The following OMB-approved forms containing the consent language are used in the federal student loan program:

Federal Stafford Loan Master Promissory Note
Federal Direct Stafford/Ford Loan Master Promissory Note
Federal PLUS Loan Application and Master Promissory Note
Federal Direct PLUS Loan Application and Master Promissory Note
FFELP and FDLP In-School Deferment Request
FFELP and FDLP Unemployment Deferment Request
FFELP Economic Hardship Deferment Request
FFELP Parent PLUS Borrower Deferment Request
FFELP and FDLP Education Related Deferment Request
FFELP and FDLP Public Service Deferment Request
FFELP and FDLP Temporary Total Disability Deferment Request
FFELP and FDLP Parental Leave / Working Mother Deferment Request

> that I provide for my cellular telephone or other wireless device using automated telephone dialing equipment or artificial or prerecorded voice or text messages.[14]

SLSA and SLSA PLC members have adopted similar language and added it to the forms and statements we send our borrowers, to our web sites, and even to our Integrated Voice Response (IVR) systems.

The language ED has implemented on its forms is workable and effective. Borrowers who have only wireless telephone lines have already made the choice as to their preferred method of communication, and presumably understand the ramifications of that choice. The current language of the NPRM would render even the above OMB-approved language unworkable.

C. There Is No Evidence That the FCC Intended to Overrule its Current Regulation on Non-Telemarketing Calls or FCC 07-232

We believe that the reach of the proposed rule exceeds its aim and that the FCC did not intend to include non-telemarketing calls in the rulemaking. Throughout the NPRM, the FCC's discussion relates only to telemarketing activities. For example, in the *Needs and Uses* section of the preamble to the NPRM, the FCC states:

> The proposed revisions would require sellers and telemarketers, when obtaining telephone subscribers' prior express consent to receive prerecorded telemarketing calls, to obtain such prior express consent *in writing* (including electronic methods of consent).[15]

[14] Economic Hardship Deferment Request, OMB No. 1845-0005. Section 3: Borrower Understandings, Certifications, and Authorization. Exp. Date 05/31/2010.
[15] NPRM, *supra* note 2, at 13473.

Further, in the *Need for, and Objectives of, the Proposed Rules* section of the NPRM, the FCC addresses the proposed amendments to 64.1200(a)(1) solely in the context of telemarketing calls:

> The first proposed amendment would conform the Commission's rules to the FTC's Telemarketing Sales Rule by prohibiting the use of prerecorded messages in telemarketing sales calls unless the seller or telemarketer has obtained the consumer's prior express consent, in writing, to receive such messages and irrespective of any established business relationship.[16]

However, the proposed changes to § 64.1200(a)(1) make no distinction between telemarketing and other calls. The caller is prohibited from making *any* autodialed and prerecorded message calls (other than emergency calls) to any wireless number unless the recipient of the call has:

- Received a clear and conspicuous disclosure that the caller is requesting authorization to make calls using an autodialer and/or prerecorded messages and the authorization is obtained without requiring such authorization as a condition of purchasing any good or service;
- Provided in writing the wireless phone number at which s/he is willing to receive such calls;
- Agreed in writing to receive the calls.

We see no discussion in the NPRM of the impact of these proposed rules on non-telemarketing calls and no indication that that the FCC intended to overrule its longstanding guidance on this issue, including its declaratory ruling in FCC 07-232, or to go farther than the FTC. Thus the proposed rules appear to exceed the intent of the rulemaking as stated throughout the preamble.

[16] *Id* at 13478.

D. Adoption of the Proposed Regulation Will Negatively Impact Student Loan Borrowers

SLSA and the SLSA PLC would like to clarify our members' use of autodialers and prerecorded messages. We are not cold-calling randomly generated numbers; we are not placing calls to make sales solicitations. The numbers called by our autodialers have been provided to us by our customers with their permission to call them at that number and are dialed in an effort to reach them with important information in connection with their student loans. We believe this use of an autodialer is an example of the type of call that Congress had in mind in acknowledging that the FCC would need to be flexible in writing the regulations. Item (13) in the *Congressional Statement of Findings* following U.S.C. 47 § 227 states:

> While the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call, the Federal Communications Commission should have the flexibility to design different rules for those types of automated or prerecorded calls that it finds are not considered a nuisance or invasion of privacy, or for noncommercial calls, consistent with the free speech protections embodied in the First Amendment of the Constitution.

The calls that SLSA and SLSA PLC members place to our customers are neither a nuisance nor an invasion of privacy. Our prerecorded messages are not telemarketing messages. We leave prerecorded messages in order to provide support to our customers in managing their loans, and to remind them of their obligations. Calls that we make include:

- Missing information on loan application
- Confirmation the named individual actually requested the debt, in cases of security freezes
- Grace period counseling
- End of grace period reminders
- Financial counseling before borrowers enter repayment
- Delinquency and missed payment reminders
- Repayment plan choices

- End of deferment or forbearance period reminders
- Fraud alerts
- Notification of statutory interest rate changes
- Acknowledgement of military active duty assignments
- Reminders of debt obligation

If loan holders and servicers cease making these calls because we are unable to obtain the prior express written consent specified in the NPRM, it is the customers who will suffer.

If borrowers must sign an additional written agreement on which they provide not only their signature but also the wireless number at which they can be called, borrowers may find this requirement intrusive and burdensome. Because of the requirement to include in the consent the wireless number to which calls may be made, creditors will have to obtain new written consent whenever a student borrower changes his or her wireless phone number. Creditors will also have to obtain new written consent if a borrower switches from using a landline phone number to a wireless number as their primary point of contact. These changes occur regularly with student loan borrowers. The TCPA does not require the express prior consent be in writing; SLSA and the SLSA PLC do not believe the FCC should impose this additional requirement.

The records of ED's loan servicer demonstrate borrowers who are not contacted by their lenders are much more likely to default. According to a Department official, 95% of defaulted borrowers in the Direct Student Loan Program were never contacted by telephone during the 360-day period leading to default. ED's loan servicer indicates it can resolve delinquencies 98% of the time when it reaches the borrower by telephone.[17] When borrowers complain to lenders and servicers after default, a common (although untrue) complaint is that the lender never reached out to the borrower, or never tried to

[17] Dwight Vigna, Director, Default Division, U.S. Dept. of Education, U.S. Department of Education Update at the NCHELP Debt Management Conference (Mar. 24, 2010).

collect on the loan. Borrowers' wireless devices are a powerful tool for contacting them, and our customers who default are generally much angrier about the calls they did not receive than the calls they did.

Additionally, with regard to federally guaranteed student loans that are delinquent, ED has established regulations requiring a minimum number of collection attempts by telephone, within specific delinquency timeframes.[18] The purpose of these requirements is to avert default, which would require the federal government to purchase from the lender at least 97% of the remaining balance of each defaulted loan. In the interest of complying with the regulations and, by extension, protecting the federal fiscal interest, lenders and servicers of federally guaranteed student loans have deployed efficient autodialing systems to contact delinquent borrowers. The proposed language in the NPRM would render these systems largely unusable in cases where the borrower has provided a wireless phone number as their only contact number. Furthermore, as indicated by the statistics cited above, the proposed restrictions on calls to wireless devices would place many borrowers at much greater risk of default, at significant taxpayer expense.

Arguably, SLSA and SLSA PLC members could continue to make financial literacy and outreach calls: we would simply dial manually and all messages would be left by a person rather than prerecorded. Businesses make use of autodialers and prerecorded messages because this technology saves money. One person manually dialing and leaving messages can complete about 15-20 calls/hour; typically our members can complete over 150 calls/hour using an autodialer. To complete the same

[18] 34 C.F.R. § 682.411.

number of calls without an autodialer, SLSA and SLSA PLC members would be required to hire many more employees (the estimates from our members indicate up to ten times) than are currently fulfilling this role.[19] Because of the added expense involved, if loan holders and servicers are prohibited from placing autodialed calls and leaving prerecorded messages, they may be forced to place only those calls mandated by law and regulation. The financial literacy and courtesy reminder calls will lapse and borrowers will suffer.

Even if SLSA and SLSA PLC members could afford to hire more staff to manually dial and leave messages, there is some question whether even these actions would be allowed without the customer's prior express written consent. The TCPA defines an ATDS or autodialer as "equipment which has the capacity – (A) to store or produce telephone numbers to be called using a random or sequential number generator; and (B) to dial such numbers."[20] We believe that many of our phone systems do not meet the statutory ATDS definition. However, recent FCC and court interpretations have focused on the *capacity* to make calls rather than whether the phone system or equipment was used to dial randomly or sequentially generated numbers.[21] Carrying these

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[19] Data compiled from SLSA member survey May, 2010.

[20] 47 U.S.C. § 227(a)(1). *See also* 47 C.F.R. § 64.1200(f)(1) ("The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.").

[21] *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 18 F.C.C. Rcd. 14014, 14091-93 (June 26, 2003) (finding that a predictive dialer is an ATDS because "when paired with certain software, [they have] the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers") [hereinafter FCC 03-153]; *Abbas v. Selling Source, LLC*, No. 09 CV 3413, 2009 WL 4884471, at *4 (N.D. Ill. Dec. 14, 2009) ("Abbas needs only to allege that the equipment that Selling Source used . . . had the capacity to produce or store and dial numbers randomly or sequentially");

interpretations to their logical extreme, loan holders and servicers may not even be able to *manually dial* using existing phone systems without first obtaining prior written consent; *all modern telephones*, including smart phones, PDAs and other wireless devices, could be considered an ATDS because they can store and call numbers.

The types of calls described above, even when autodialed and with prerecorded messages, are allowed to be placed to residential lines. However, the customers of SLSA and SLSA PLC members tend to be young adults, most of whom do not have landlines. More than half of our customers have provided SLSA and SLSA PLC members with wireless phone numbers; over one-third of our customers have only wireless numbers, and those numbers are growing rapidly each year.[22]

The trend toward exclusive use of wireless numbers that we have experienced with our customers is borne out by other studies. A just-released federal report demonstrates that one of every four American homes (24.5%) relies exclusively on wireless service.[23] In 1995 only 13% of Americans had wireless phones; in 2009 91% of Americans were wireless phone users.[24] Of Americans 18-24 years old, 37.8% have a wireless phone but no landline. Of Americans 25-29 years old, 48.6% have a wireless

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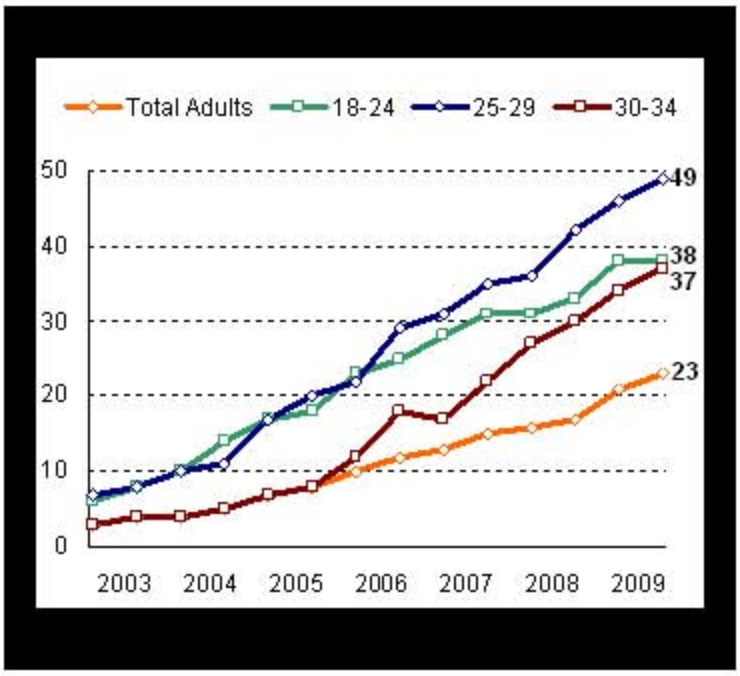
Satterfield v. Simon & Schuster, Inc., 569 F.3d 946, 951 (9th Cir. 2009) (finding a genuine issue of material fact as to whether the phone system had the capacity to be an ATDS, as the focus must be on the *capacity* rather than how the system is actually used).

[22] Data compiled from SLSA member survey May, 2010.

[23] Blumberg SJ, Luke JV. Wireless substitution: Early release of estimates from the National Health Interview Survey, July–December 2009. National Center for Health Statistics. May 2010. 1 (May 12, 2010), http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201005.htm (last visited May 21, 2010).

[24] CTIA – The Wireless Association, Wireless Quick Facts. http://www.ctia.org/advocacy/research/index.cfm/AID/10323 (last visited May 21, 2010).

phone but no landline.[25] A recent Pew Research Center report includes the following very telling graphic showing the ever-increasing percentages of households with wireless-only service, titled "The Growing Cell-Only Population, by Age:"[26]



Breaking down wireless use by economic circumstance is equally revealing. Adults living in (36.3%) or near poverty (29.0%) are more likely than higher income adults to be living in households with only wireless telephones.[27] More than three in five adults (62.9%) who share an apartment with unrelated roommates have only wireless

[25] Blumberg & Luke, *supra* note 23, at 3.
[26] Christian L, Keeter S, Purcell K, Smith A. Assessing the Cell Phone Challenge to Survey Research in 2010. Pew Internet Research Center for the People & the Press, Pew Internet & American Life Project. May 2010. 1 (May 20, 2010), http://pewresearch.org/pubs/1601/assessing-cell-phone-challenge-in-public-opinion-surveys (last visited May 21, 2010).
[27] Blumberg & Luke, *supra* note 23, at 3.

service.[28] Hispanic adults (30.4%) and black adults (25.0%) are more likely than white adults (21.0%) to live in wireless-only households.[29]

These statistics demonstrate that exactly the population most likely to have student loans—individuals who are 18-29 years old—are more likely than the rest of the population to have wireless phones only. Further, adults whose income is constrained are more likely to have only wireless service than adults who are more affluent. This means that if SLSA and SLSA PLC members were to stop making financial literacy calls, the population most likely to need financial outreach would become the population least likely to receive it. The proposed rules would inadvertently discriminate against minorities and low-income customers receiving helpful calls from their creditors simply because of their tendency toward wireless communication.

II. THE COMMISSION SHOULD REAFFIRM THAT PRIOR EXPRESS CONSENT MAY BE OBTAINED AT ANY POINT DURING THE LIFE OF THE TRANSACTION

Some are arguing that in order to be valid, consent must be given prior to the completion of the original transaction (for example in the loan application) and cannot be given later in the transaction. The plain meaning of "prior" in the statute and regulations is that consent must be given prior to the creditor calling the wireless number; to use any other interpretation creates the possibility of a catch-22 situation that can never be remedied. For example, student loan borrowers frequently apply for their first student loan as high-school seniors, still living at home. They may provide their parents' landline

[28] *Id.*
[29] *Id.*

telephone number in the original application and/or promissory note. But once they leave home, they are more likely than not to have only a wireless number. Not to permit a creditor to obtain permission to use a wireless number later in the life of the loan would mean that, in this situation, the creditor could never get permission to call a borrower's cell phone. We urge the FCC to reaffirm in this rulemaking that consent may be given at any time prior to the use of the wireless number.

CONCLUSION

For all of these reasons SLSA and the SLSA PLC strongly urge the Commission not to include in this NPRM non-telemarketing calls placed to wireless devices that are autodialed and/or leave prerecorded messages. Non-telemarketing ATDS calls and/or prerecorded messages placed to wireless devices should continue to be governed by long-standing FCC guidance, including FCC 07-232.

SLSA and the SLSA PLC recommend the following changes to the NPRM: The FCC should continue to allow creditors and their agents to place non-telemarketing ATDS calls and/or to leave prerecorded messages to wireless numbers in accordance with FCC 07-23. And prior express consent should continue to consist of the individual providing a wireless number to the creditor or its agent in any credit-related communication at any point in time during the life of the transaction. The consent is not required to be in writing.

The FCC's proposed rule can be aligned with the FTC's TSR without affecting non-telemarketing calls by striking the proposed word "written" from 47 CFR § 64.1200(a)(1) and by replacing proposed (a)(1)(v) with the following:

> (v) For purposes of paragraph (a)(1) of this section, if the call is for a commercial purpose and includes or introduces an unsolicited advertisement or constitutes a telephone solicitation, a person or entity shall be deemed to have obtained prior express consent upon obtaining from the recipient of the call an express agreement, in writing, that:

We also believe the words "or wireless device" need to be added in three places: (a)(6)(i), (b)(1), and (b)(2) as these are amended by the NPRM. These clauses would then read as follows:

> (a)(6)(i) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line or wireless device that is assigned …
>
> (b)(1) All artificial or prerecorded telephone messages, other than those delivered to residential telephone or wireless device subscribers for telemarketing purposes, shall….
>
> (b)(2) All artificial or prerecorded telephone messages delivered to residential telephone or wireless device subscribers for telemarketing purposes shall….

SLSA and the SLSA PLC appreciate the FCC's stated desire to bring its telemarketing regulations into alignment with the TSR. However, as written, the suggested changes to 47 CFR § 64.1200(a)(1) go much farther and would also affect non-telemarketing calls made by creditors and other businesses with established business relationships with the consumer. This could negatively impact both customers who receive credit and businesses that extend credit. We believe the Commission can align the two regulations without disturbing FCC 07-232 by revising the NPRM as suggested above. These changes would still require that consent for telemarketing purposes be written, but would limit application of the written consent requirement to commercial calls that are unsolicited advertisements or that constitute a telephone solicitation. We do

not believe that the Commission intended to override FCC 07-232 because there is no discussion in the proposal indicating any such intent.

Respectfully submitted on behalf of both SLSA and the SLSA PLC,

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